persoually liable on such contracts. Not only is there nothing in the statute to declare that contracts made before compliance are void, but they are not even prohibited. (Code, sec. 1105)."

As to *insurance* companies, it is provided (sec. 1265 of the Code) that "no insurance company, *which is not incorporated under the laws of this State, shall make any contracts of insurance within this State,* until such company shall have complied with the provisions of this chapter" [Chap. 53]. This section, standing alone, it is believed, would invalidate any contract made without the compliance required. But, by sec. 1269, it is expressly provided that, "although such insurance company may make insurance, as aforesaid, without conforming to the requirements of this chapter, *the contract shall be valid.*"

DUFF v. COMMONWEALTH.*

Virginia Court of Appeals: At Staunton.

(September 19, 1895.)

1. CRIMINAL LAW—*Indictment—fraudulent removal of goods levied or distrained—larceny.* An indictment under Section 3712 of the Code, for fraudulently removing goods which have been levied or distrained, may be for larceny, or it may be framed on the language of the statute; but, if the latter, the indictment must describe the offense either in the terms of the statute or in language substantially equivalent thereto.

Writ of error to a judgment of the Corporation Court of the City of Buena Vista, rendered December 12, 1893, for a fine of $13.75 and costs. *Reversed.*

The opinion states the case.

Willis B. Smith, for the plaintiff in error.

Attorney-General R. Taylor Scott, for the Commonwealth.

KEITH, P., delivered the opinion of the court.

W. P. Duff was indicted in the Corporation Court of the city of Buena Vista, in October, 1893, under section 3712 of the Code of Virginia, which provides that, "If any person fraudulently remove, destroy, receive or secrete any goods and chattels that have been distrained or levied on, with intent to defeat such distress or levy, he shall be deemed guilty of larceny thereof." He might have been indicted for larceny, and proof of the facts set out in the section just quoted

*Reported by M. P. Burks, State Reporter.

would have been sufficient to sustain a conviction for that offense. This court has held that under the statutes declaring that persons guilty of receiving money under false pretenses, embezzlement, receiving stolen goods, proof of the facts constituting these several offenses is sufficient to sustain an indictment for larceny. See *Pitsnogle's* case and authorities there cited, decided at the Wytheville term of this court for 1895.

The pleader, however, in this case preferred to frame his indictment upon the language of the statute, which it was entirely proper for him to do; but in that case it was necessary to describe the offense created by the statute, either in the terms of the statute itself, or in language substantially equivalent thereto. The indictment in this case charges that a judgment was obtained against W. P. Duff in the name of Joseph Slough for the sum of $10.50 and $1.30 for costs; that upon the judgment an execution issued which was placed in the hands of Silas Nuckols, a constable in and for the city of Buena Vista, who on the 17th day of December, 1892, levied the said execution upon a horse, a mare and other property of the goods and chattels of W. P. Duff, and that afterwards, to-wit, on the day and year aforesaid, Duff, "with intent to defeat the levy aforesaid, the said mare, horse and harness, so as aforesaid taken by the said Silas Nuckols, by virtue of the execution before mentioned, and in the custody of the said Silas Nuckols, constable as aforesaid, then being from and out of custody and against the will of him, the said Silas Nichols, then and there unlawfully and injuriously did remove, take and carry away, the said execution for the sum before mentioned being due, nor any part thereof being paid. And other wrongs to the said Silas Nuckols then and there did, to the great damage of the said Silas Nuckols, and against the peace and dignity of the Commonwealth of Virginia."

The gravamen of the offense created by the section under which the defendant was indicted, is, that the property levied upon was fraudulently removed, destroyed, received or secreted with intent to defeat the levy or distress. It was not enough to charge that the act was done unlawfully and injuriously, but it was necessary, as we think, either to frame the indictment so as to charge a larceny of the goods, or to follow substantially the language of the statute and charge the act as having been fraudulently done.

To this indictment there was a demurrer, which was overruled, the case tried, the defendant found guilty, and a fine imposed. We think the court erred in overruling the demurrer to the indictment, and for

this reason the judgment complained of should be reversed, and the case should be remanded to the Corporation Court of the city of Buena Vista. *Reversed.*

BY THE EDITOR.—Attention is called to the fact that previous to the late revision there was no statute of the State similar to section 3712 of the Code. It was not uncommonly the case that, after personal property had been distrained or levied on, the owner or some other person would remove, secrete, or destroy it, with intent to defeat the distress or levy, and yet not under such circumstances as to amount to larceny at common law. It was deemed politic, in order the more effectually to restrain the commission of such a wrong, to make it larceny when *fraudulently* done with *the intent* aforesaid.

The indictment might have been for larceny, according to the common form in such cases, and that would have been sufficient, as the court decided; but even then, at the trial, to bring the case within the statute, the elements of the offense would have been required to be *proved*, to-wit, that the accused committed the act *fraudulently* and *with intent to defeat the levy.*